

January 12, 2016

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

● CALL MEETING TO ORDER

● ROLL CALL

PRESENT: Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

ABSENT:

Staff present: Atteberry, Daggett, Nelson

1. **Consideration of an Appeal of the Planning and Zoning Board Decision Approving the Uncommon Project Development Plan (PDP 15-0013). (Planning and Zoning Board Decision Upheld, with conditions)**

The purpose of this item is to consider an appeal of the Planning and Zoning Board decision of October 29, 2015, approving the Uncommon Project Development Plan at 310 South College Avenue.

*On November 12, 2015, Councilmember Cunniff filed a Notice of Appeal (**Attachment 2**) with two questions regarding the Planning and Zoning Board (P&Z Board) decision on the Uncommon Project Development Plan:*

1. *Is the project actually compatible with the Land Use Code (specifically, subsections 4.16(D)(4)(b), 4.16(E)(1)(c), 3.4.7(A), 3.4.7(B), and others referenced in the staff recommendation regarding this proposal)?*
2. *What evidence did P&Z use, and how did that factor into its decision?*

The focus of the P&Z Board hearing was the issue of overall mass, bulk and scale of the proposed building in relation to the adjacent context, as governed by several interrelated development standards in the Land Use Code.

Mayor Troxell stated Council will first consider procedural issues, then presentations, and Council action.

City Attorney Daggett provided a brief explanation of the appeals procedure and defined the term “parties-in-interest”.

Mayor Troxell asked parties-in-interest to identify themselves and discussed the procedure and time allotments for the parties-in-interest to speak.

Lucia Liley, representative for the opponents of the appeal, requested 30 minutes for presentation and 15 minutes for rebuttal rather than the Mayor’s suggested 20 minutes and 10 minutes. Mayor Troxell replied by adjusting the times to be 25 minutes for each presentation with 10 minute rebuttals.

Tom Leeson, Community Development and Neighborhood Services Director, stated this item is an appeal of the Planning and Zoning Board’s approval of the Uncommon development project of October 29, 2015. He described the proposed project as a mixed-use building on the southeast

corner of Olive and College, and stated the appeal consists of two questions: first, is the project compatible with certain specific sections of the Land Use Code involving mass, bulk and scale, and second, what evidence did the Board use and how did that factor into its decision.

Regarding compatibility, Leeson noted the Landmark Preservation Commission forwarded a recommendation to the Board to deny the project as being incompatible with nearby historic structures. Additionally, staff found the mass, bulk and scale of the proposed building was not adequately mitigated to be compatible per Code standards and recommended denial of the PDP as well. Leeson went on to detail the findings of the Board and its subsequent approval of the project.

Clark Mapes, City Planner, stated there is no numerically specified ground floor setback in this particular area of the Downtown district; however, one standard does address the combination of ground floor setbacks and upper floor setbacks, or step backs. In terms of the upper floors, Mapes described the proposed step backs of the building. The transformer box at the southeast corner of the site will be replaced with a new, larger box in a 20-foot wide portion of the walkway.

Mayor Troxell asked Councilmembers to explain any observations made or conversations held at the site visit, noting he and Councilmembers Cunniff, Overbeck and Stephens attended the site visit.

Councilmember Cunniff stated he directed questions to staff based on his observations in walking the perimeter of the site.

Councilmember Overbeck stated he directed questions to staff regarding trees and other issues.

Councilmember Stephens stated she walked the perimeter of the building and made observations.

Mayor Troxell stated he asked questions regarding adjacent historic buildings, trees, and the transformer box.

Mayor Troxell requested parties-in-interest address procedural issues prior to the appeal presentations.

City Attorney Daggett noted an email from Eric Sutherland directed toward the Planning and Zoning Board did not make it to the Board prior to its hearing due to an administrative error. She provided copies of the email to Council and stated Council should consider whether it will be considered as part of the record of the hearing. Mayor Troxell accepted the email as part of the record.

Eric Sutherland objected to Lucia Liley's participation and representation of the applicant in this matter as she is legal counsel for the Downtown Development Authority.

Lucia Liley, attorney for the applicant, stated the Downtown Development Authority (DDA) is not a component unit of the City of Fort Collins; it is an independent legal entity and has no land use authority or official capacity in a project matter. Additionally, she stated she has not participated in meetings when the DDA discussed and reviewed this project.

Councilmember Martinez stated he is also part of the DDA and had recused himself from meetings relating to this project.

Councilmember Campana stated he is the alternate member of the DDA and had recused himself from meetings relating to this project.

Councilmember Cunniff requested input from City Attorney Daggett. City Attorney Daggett replied she agrees the DDA is not involved in the decision making process regarding this project, this decision is a City process, and noted specific rules are applied by attorneys in carrying out their ethical responsibilities to their clients regarding conflicts. The issue does not have any particular relevance for the City's decision or for the appeal before Council.

Mayor Troxell ruled there is no conflict of interest regarding Ms. Liley's participation in the hearing.

APPELLANT PRESENTATION

Councilmember Cunniff stated his appeal concerns were related to the conflicting opinions regarding this project and the Land Use Code regarding the historic compatibility as well as the size and mass of the building.

Mayor Troxell requested a presentation by parties-in-interest in support of the appeal.

Les Kaplan cautioned Council against accepting representations made by applicants regarding the public impact of the project with no way to enforce that later. He cited parking issues with the Capstone project on College as an example and stated this project was initially proposed as a student housing project, which would have an increased parking requirement. The support for this project would not exist if it were a student housing project and the City has no way of enforcing whether or not the project is leased by the bedroom once it is approved, as is common with many student housing projects. He requested the City require this project not be leased or sub-leased by the bedroom.

Regarding the mass and scale of the project, Kaplan stated judging the compatibility of this project based on development which has yet to occur is a large leap and encouraged adoption of larger projects on a graduated basis.

Myrne Watrous spoke in support of the Landmark Preservation Commission's decision to oppose this project, stating it is not compatible with the surrounding historic district. She agreed with Mr. Kaplan's comments regarding parking and with comments regarding excessive bulk, mass and scale.

Mayor Troxell requested a presentation by parties-in-interest opposed to the appeal.

APPLICANT PRESENTATION

Ms. Liley stated this is a catalyst project providing needed retail and housing. She noted the project is under its permitted height and building coverage and provides more mitigation than is illustrated in the Land Use Code. Ms. Liley detailed the provisions of the Downtown Plan and Land Use Code which support this project as proposed, noting compatibility is not defined as

being "the same as". Ms. Liley discussed the historic preservation code requirements, stating this project meets each of the specific criteria of Code section 3.4.7.

Eduardo Illanes, project architect, discussed the project setbacks and step backs and the interaction of the building with sidewalks. He noted a main goal of the building is to hide vehicular traffic and discussed the paseo aspect of the project. He discussed the proposed layout of the building and its breakdown into three areas.

Bevin Parker, Downtown Development Authority Chair, discussed the DDA's support of the project, stating it is an example of density for the downtown area and is an example of infill development represented in the Downtown Plan and City Plan.

Mayor Troxell requested rebuttal from the individuals in support of the appeal and received no input. He then requested rebuttal from the individuals opposed to the appeal.

Justin Larson stated this project excels at scale and massing and is a good example of what to do for future projects.

Steve Levinger, Armstrong Hotel owner and operator, expressed support for the project stating it will compliment his property as well as Downtown as a whole. He stated denial of this project would send a message to the development community that the rules and standards for development in Downtown Fort Collins are meaningless.

Sandy Lemburg supported the project and expressed concern regarding the City's procedures; however, he opposed the use of tax increment financing and agreed with Mr. Kaplan's suggestion requiring the project to not be leased by the bedroom.

Joe Rowan stated the standards for this project are not only subjective but spurious.

Ms. Liley read parts of letters from Carey Hewitt, Stu MacMillan, and the pastor of the Mountain View Community Church in support of the project.

Eric Nichols supported the project stating it is compatible with City standards.

Mayor Troxell requested Council discussion of the issue.

Councilmember Cunniff asked how 'public street frontage' is defined in the Land Use Code. Mapes replied that term would reference Olive and College in this case and noted standards relating to street frontage are not written with alleys in mind.

Councilmember Cunniff asked about staff's opinion regarding the building not providing a plaza, or public open space. Mapes replied the Code requires taller buildings to have ground floor open space, or plazas, in order to mitigate mass. He noted the proposed plaza space is underneath the second floor and next to the building's paseo. He stated the applicant emphasized both spaces as working to meet the requirement, whereas staff's initial finding did not consider the paseo as a plaza. At the Board hearing, both spaces were considered as working to meet the public space requirement and the Board found that to be adequate in meeting the standard.

Councilmember Cunniff asked how the applicant's verbal commitment that the paseo not be fenced off is enforceable. Mapes replied the final site plans will show that aspect; however, he

noted the applicant team would like to allow a small portion to possibly be fenced for a cafe which may serve alcohol.

Councilmember Cunniff discussed the east elevation and asked about the materials to be used. Mapes replied the gray material is cement board with some brick projecting elements. He stated the Board discussed the east elevation and the lack of step back requirements along alleys, which was likely the primary reason for the Board's split vote.

Councilmember Cunniff asked what legal standing the Downtown Plan and other plans have in land use decisions versus the language of the Land Use Code. Brad Yatabe, Assistant City Attorney, replied the Land Use Code sets out standards to be met whereas plans such as the Downtown Plan are more aspirational; however, he noted Council has room to interpret the Land Use Code in order to fit some of the aspirational aspect of those plans into some of its consideration.

Councilmember Cunniff asked what part of the City permitting process addresses the rental of the building by the unit versus by the bedroom. Mapes replied the approved plans would not allow leasing by the bedroom. He stated a note on the final site plan could address the issue specifically for an additional measure of assurance.

Councilmember Martinez asked if there is a constitutional issue regarding such a requirement. City Attorney Daggett replied she is concerned regarding how the City would stipulate against sub-leasing by the bedroom.

Councilmember Campana stated he cannot recall that type of stipulation being placed on final site plans but noted the City does have different parking requirements for by-the-bedroom leased projects.

Councilmember Campana commended the west, north and south elevations but expressed concern regarding the east elevation. Mapes stated the wall is about 230 feet long total.

Councilmember Campana expressed concern regarding the prominence of the east elevation in the view corridors of neighboring properties, stating there is room for improvement on that elevation.

Councilmember Cunniff agreed with Councilmember Campana's concerns regarding the east elevation.

Councilmember Martinez asked if it would be possible to break up the face of the east wall from a design perspective. Mr. Illanes replied the east facade is not completely flat and noted the brick does continue on the east elevation. Additionally, he stated the height of the building also varies on the east side, though not to the same extent as the other elevations. He went on to detail the materials to be used and noted shadow lines will be created by the variation in depth.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Campana, to uphold the decision of the Planning and Zoning Board to approve the project because the Board properly

Councilmember Cunniff expressed interest in the modification of the fencing in the plaza area as well as the modification on the project's use.

Mayor Troxell suggested that information could be considered advisement rather than a formal amendment.

Mayor Pro Tem Horak stated he is unsure that the modifications would change the legality of the issues.

Councilmember Cunniff stated he would like to ensure a system is in place to enforce these types of issues.

Ms. Liley stated the applicant is not opposed to the inclusion of the stipulation regarding no leasing per bedroom in the development agreement, stating that might be a better approach than the inclusion of the language on the site plan.

Councilmember Campana disagreed stating the information should be listed on the site plan or on both documents.

City Attorney Daggett suggested Council amend the motion and suggested two draft conditions relating to the Land Use Code provision regarding ground floor open space, stating the project plans must include enforceable requirements that the plaza area at the southwest corner of the building and the walkway along the south end of the building, or paseo, be maintained as open to the public, except to the extent fencing is required to bound an outdoor cafe approved by the City.

Councilmember Cunniff asked how large the fenced area would need to be. Christopher Johnson, part of the applicant team, stated ten feet off of the building is adequate, which would result in 300 square feet.

Leeson expressed concern regarding the ambiguity of the 300 square feet, suggesting instead a distance from the building be listed.

Mayor Pro Tem Horak and Councilmember Campana accepted the amended language.

Councilmember Campana thanked the parties who worked on this item and commended the efforts in preserving the Downtown area.

Councilmember Cunniff stated he would support the motion; however, he expressed concern regarding the east facade and its possible precedent-setting aspect.

City Attorney Daggett noted there is a second condition in her suggested language which was accepted by Mayor Pro Tem Horak and Councilmember Campana.

Mayor Pro Tem Horak stated the Planning and Zoning Board did its job in evaluating the project.

Councilmember Stephens agreed with Mayor Pro Tem Horak and commended the design of the building stating it will increase the vibrancy of this part of the Downtown area.

Councilmember Martinez stated he would support the motion; however, he opposed the condition regarding how the building will need to be rented.

Mayor Troxell expressed support for the project and the decision of the Planning and Zoning Board. He stated the Landmark Preservation Commission was out of bounds in its role in terms of this project.

Councilmember Cunniff stated appropriately clear guidelines for the Landmark Preservation Commission need to exist.

Mayor Troxell stated the recommended denial of this project by the Landmark Preservation Commission was out of bounds and encouraged more constructive involvement from the Commission.

Councilmember Campana stated the Land Use Code is prescriptive in all areas with the exception of compatibility.

RESULT:	PLANNING AND ZONING BOARD DECISION WAS UPHELD, WITH CONDITIONS
MOVER:	Gerry Horak, District 6
SECONDER:	Gino Campana, District 3
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

2. **Resolution 2016-003 Making Appointments to Various Boards and Commissions of the City of Fort Collins. (Adopted as Amended)**

The purpose of this item is to appoint individuals to fill vacancies that currently exist on various boards and commissions due to resignations of board members and vacancies to be created upon the expiration of terms of current members. Applications were solicited through November. Council teams interviewed applicants in December and January. This Resolution appoints individuals to fill current vacancies and expiring terms.

This Resolution does not fill all vacancies. Interviews are continuing, and any remaining vacancies will be advertised as needed.

Mayor Pro Tem Troxell made a motion, seconded by Councilmember Cunniff, to adopt Resolution 2016-003, with Renee Sherman and Miram Chase being appointed to the Art in Public Places Board, Kristin Kirkpatrick to the Planning and Zoning Board, John Lindsay and Del Bernhardt to the Retirement Committee.

Councilmember Cunniff made a friendly amendment, accepted by Mayor Pro Tem Troxell, to add Eric Shenk to the Transportation Board.

Mayor Pro Tem Horak thanked the applicants and commended the work of the City Clerk's Office in recruitment.

RESULT:	RESOLUTION 2016-003 ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Overbeck, Campana, Troxell, Cunniff, Horak

● **OTHER BUSINESS**

Councilmember Cunniff stated the Housing Authority Board responded to the RFP on the Horsetooth Land Bank property and discussed the requirement for the Housing Authority to maintain control of the property. He requested and received Council support to ensure any necessary measures are taken.

Mayor Pro Tem Horak requested and received support for looking into the possibility of Boardmembers abstaining on votes. Additionally, he requested additional information regarding historical review and possible changes in guidelines.

Councilmember Cunniff discussed the importance of historic preservation and defensible, consistent processes.

City Manager Atteberry stated he will return in March or April with additional information regarding inconsistencies in historic preservation.

Councilmember Campana noted some Landmark Preservation decisions cannot be appealed to Council and requested that aspect also be considered.

● **ADJOURNMENT**

The meeting adjourned at 8:25 PM.



ATTEST:

CD Winkelmann

City Clerk

A handwritten signature in black ink, appearing to be "D. Horak", is written over a horizontal line. Below the signature, the word "Mayor" is printed.

Mayor